

June 9th E&SC Meeting Notes Summary

Discussion Points

- Introductions
- Requirements of the City regarding meeting Erosion and Sediment Control requirements
- Federal mandate, EPA has been delegated the State of Nebraska the authority to regulate communities that are required to comply
- Reasons for meeting and the request for input from developers and builders to develop an updates E&SC program
- Existing E&SC ordinances spread out in separate in several titles. Ordinances should be clarified and consolidated.
- EPA fines the City of Dallas TX for non-compliance \$800,000 fine plus \$3.5 million in required changes.
- EPA visits and fines in Omaha in 2004, \$35,000 fines plus pending fines estimated at \$300,000.
- Process to date, stakeholders meeting review (City, developers, builders, environmental groups, homeowner associations)
- Nebraska Department of Environmental Quality proposed changes to the NPDES Construction General permit impacting small sites that are “part of a larger common plan of development or sale”.
- Consultant recommendation based on input from stakeholders, Option 1 & 2
- Option 1 - a program where the developer has over site for the E&SC requirements and accepts responsibility for the small sites.
- Option 2 the developer passes on the responsibility for E&SC to the individual builders
- Program needs to be equally enforced, important for City to set good example
- How do the developer, builders and the subs fit into enforcement tracking?
- EPA enforcement, developer can be enforced upon for site violations, City can be enforced upon for construction site and overall program deficiencies. City has ultimate responsibility for E&SC program implementation.
- Omaha electronic submittal inspections discussed
- What ever option is chosen, the requirements need to be well defined
- Developer vs. City over site of the small construction sites
- Some builders would pay extra to have developer clean mud from streets; maintenance should be a workable solution.
- Proposed State General Construction Permit driving the small sites program, responsibility for small sites must be tracked through some type of sub-permit and also meet some of the same requirements the larger site had (i.e. a SWPPP, BMP's, inspections), how that get done is negotiable.
- Cost - Developer vs. increased City over site, either option must: have control of the situation, be fair, equally enforceable. Increased cost for small site requirements (i.e. individual site plans, maintenance, inspections, and permit tracking) would be incurred depending on if the developer or the City has the

majority of over site of the E&SC program. Costs would be different depending on who is has major over site of the program.

- Stormwater Pollution Prevent Plan for individual small sites could be very short, possibly a couple of pages, versus the more stringent requirements of the large site.
- Developer could develop SWPPP for the builder that makes the builder aware of their responsibility, i.e. generic SWPPP, site plan, BMP's needed on the site, maintenance, inspections, and non-compliance enforcement.
- Some folks are more driven by wanting to do the "right thing" versus having a hammer.
- One area developer has is already implementing the option where the developer is doing the over site on the smaller lots in his developments, hires out for inspections, and has all subs sign liability contract for mud tracking.
- Builder asked if the purpose of this meeting was to form a proposal, a consensus of Option #1 or #2 or work together as a group.
- NDEQ provided information regarding the Federal regulations and that areas that are smaller than one acre you will be dealing with local entities and not the State
- A question was asked if small communities have their own stormwater permit and the answer was the whole state was covered under a general permit.
- Why is it necessary to create a new inspection process when we have an existing one? Could we consider using the current existing staff from Building and Safety to assist with this task?
- State requires any disturbance of land one acre and over to have a SWPPP regardless of it's location on the state.
- DEQ stated some of the problems Omaha has with keeping track of contact information for the contractors on development and then the disconnect of responsibility when the lots are sold.
- A developer stated that the current E&SC plan is a "paperwork nightmare" and feels that the builders is responsible for E&SC when they purchase the lot.
- Builder concerns regarding E&SC responsibility and impacts from other owners of adjacent lots and responsibilities/options the developer has in the process.
- More resources will be required for either E&SC program option and some additional cost is a going to be incurred. Fees and additional cost need to be kept to a minimum.
- A consultant commented that the City should develop E&SC standards for small individual building sites needed. Issues exist with utility installers tearing up E&SC measures. Engineer/developer E&SC maintenance starts falling off after lots are sold to builders. A recommendation for a complete E&SC plan including the individual construction phase, basically this is the type of program Omaha has.
- Consultant has offered engineering services to help developer to comply with more E&SC compliance, but this will cost the developer more. In some municipalities additional training is provided to B&S to conduct E&SC compliance inspections. This can reduce the cost, but slows down response for the specific initial requested inspections.

- Builder concerns for other builders using adjacent open lots for dumping and access, often leaving excess concrete and mud tracking off of these sites, question regarding accountability when others are to blame.
- Current issues exist with ordinances not addressing accountability issues regarding impacts from others. City has some enforcement tools but this need to be improved to make a more equitable enforcement program.
- NDEQ requires that the City meet six federal requirements for a E&SC program. How a City does that is up to them, the State has no preference as long as the municipality complies with these six requirements.
- Concern was that using existing staff and taking on additional responsibilities regarding problem sites could slow up the building permit process and inspection. Building and Safety would look into that suggestion.
- Overall development grading and drainage patterns not followed through to the individual building site. This eventually becomes a legal battle.
- Need to be solid standards for installation of Erosion and Sediment Control. Installers need to have specific guidelines in order to comply. City is responsible for all guidance on the local level; State will not get involved in specific points of compliance.
- Regulations are gray areas compliance is a moving target. How does “the maximum extent practical” apply? Document everything and lay out a plan.
- Concerns for inspecting and what can be done to keep cost down.
- NDEQ most concerned with, have the BMPs been implemented and who is responsible for such implementation?
- Comments regarding a raised level of education regarding compliance could reduce the amount of staff needed on the City side of enforcement.
- Questions remain on Option #1 and #2, inspection, who issues the permit and whose has the responsibility on these sites?
- A show of hands to determine a preference for either options showed that there was a mixed bag between choosing #1 or #2
- The final question from the audience was when it gets down to the individual lot transition who is going to set the standards, developer (with a mini SWPPP) or have the City set the standards and enforcement.
- At the end of the meeting, key people were selected and have a working session and have all group represented with follow-up meeting.